STATE OF MICHIGAN

COURT OF APPEALS

LAURA ACHENBACH,

Plaintiff-Appellant,

v

COUNTY OF MUSKEGON,

Defendant-Appellee.

UNPUBLISHED
April 24, 2007

No. 265430
Muskegon Circuit Court
LC No. 04-043481-CK

Before: O'Connell, P.J., and Murray and Davis, JJ.

PER CURIAM.

Plaintiff appeals by leave granted the trial court's order dismissing her action for writ of superintending control. On appeal, plaintiff alleges that the trial court erred in dismissing the claim for superintending control because the county personnel hearing board (board) did not reach its own independent, factual conclusion and substantial evidence on the record did not support her discharge. We affirm.

We review the trial court's denial of the request for superintending control for an abuse of discretion. *In re Wayne County Prosecutor v Parole Board*, 232 Mich App 482, 484; 591 NW2d 359 (1998). The abuse of discretion standard recognizes that there are circumstances in which there will be more than one reasonable and principled outcome. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). If the trial court's conclusion reflects one of the possible principled outcomes, the trial court has not abused its discretion and will be affirmed. *Id.* In this case, we conclude that the trial court did not abuse its discretion in denying plaintiff's request for a writ of superintending control.

Plaintiff's brief on appeal focuses upon two arguments that are somewhat interrelated. First, plaintiff asserts that the board improperly accepted the findings of fact submitted by the employer, as opposed to simply making its own independent findings of fact. Second, plaintiff argues that the substantial evidence on the record did not support the findings of fact ultimately adopted by the board. We disagree on both accounts.

With respect to plaintiff's first argument, there is nothing in the law – at least we have found none and plaintiff has pointed to none – that prohibits a county board from requesting proposed findings of fact from both sides and adopting either sides in whole or in part as a basis for its decision. In fact, courts routinely do this at the conclusion of bench trials and we see nothing incorrect in the board doing it in this case. The important point is that there must be

facts on the record supporting the findings, and the findings must actually be that of the board. Here, the board cited the record for its factual findings, and the board voted unanimously to adopt the findings of fact as its own. Consequently, the trial court's decision to affirm the board's decision was not an abuse of discretion.

Additionally, we find ample evidence to support the trial court's holding that the board's decision was supported by substantial evidence on the record. There was a large amount of evidence presented to the board establishing that plaintiff knew that the time information she was submitting was false, and that she nonetheless submitted it in anticipation of subsequently making up the time. The board's ultimate findings of fact outline this testimony, and included citations to the hearing transcript in support of its findings. After recounting the facts that it found at the hearing, the board concluded that plaintiff "knowingly submitted a payroll record indicating that she had worked 80 hours when in fact she knew she had worked 73 hours." Additionally, the board concluded that plaintiff "knew at the time that this entry was false and yet intentionally submitted it to the accounting department," and therefore ruled that plaintiff "knowingly falsifi[ed] any time keeping record *or intentionally* [*gave*] *false information to anyone who's duty is to make such record . . . .*" Because the substantial evidence test requires less than a preponderance of the evidence to be satisfied, *Pheasant Ring v Waterford Twp*, 272 Mich App 436, 438; 726 NW2d 741 (2006), we readily conclude this test was satisfied here. We also decline plaintiff's invitation to re-examine the evidence and come to our own independent conclusion as to the correct result, as that would require us to impermissibly substitute our judgment for that of the board. *McBride v Pontiac School District*, 218 Mich App 113, 123; 553 NW2d 646 (1996).

Finally, plaintiff argues that the board has a clear legal duty to place a definition to the terms "knowingly falsifying" in order to provide guidance as to what conduct by county employees is or is not acceptable. We respectfully disagree. First, we note that plaintiff did not raise this issue on appeal until her reply brief, so this Court need not address it. *Blazer Foods Inc v Restaurant Properties Inc*, 259 Mich App 241, 252; 673 NW2d 805 (2003). Second, and more importantly, the board did not make an exclusive finding that plaintiff "knowingly falsified" a time keeping record; instead, as quoted above, the board concluded that the information submitted was false, i.e. plaintiff indicated that she worked 80 hours when she in fact only worked 73 hours, and she knew that was false when she submitted the information. This finding, which was made by the board during the course of its findings of fact, supports the finding that plaintiff violated the second clause of Rule 8, i.e., that she "intentionally [gave] false information to anyone whose duty it is to make such [time] record." Therefore, because the board set forth the facts justifying this conclusion, it did not have a clear legal duty to define what "knowingly falsifying" means.

Affirmed.

/s/ Peter D. O'Connell
/s/ Christopher M. Murray
/s/ Alton T. Davis